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**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

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**REQUEST FOR COMMENTS REGARDING IMPLEMENTATION  
OF RURAL SERVICE IMPROVEMENT ACT  
DOCKETS 14694 AND 14695**

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**NOTICE**

On August 2, 2002, the Rural Service Improvement Act of 2002 became law. The Act concerns intra-Alaska mail. Among other things, it requires the Secretary of Transportation to implement certain provisions of the Act. The law requires that the Secretary use show-cause procedures to conduct a bush mail rate investigation to determine new rates and review the need for such every two years. The Department has begun that process. Order 2002-1-4 required the carriers to submit additional data to enable the Department to conduct such an investigation.

The new law also raises several issues that would have important effects on intra-Alaska mail. As a result, the law requires the Department to act in several new areas, and we are requesting comments before we act.

**First**, paragraph (k)(4) requires that:

“(4) Carriers qualified to be tendered nonpriority bypass mail shall submit to the Secretary the number and type of aircraft in the carrier's fleet, the level of passenger insurance covering its fleet, and the name of the insurance company providing such coverage.”

Consistent with this paragraph, we have prepared an attachment, as a sample of what we would tentatively require carriers to report monthly. We request comments on the sample report, particularly comments on whether there are alternative reporting requirements that would meet the statutory requirements in less burdensome ways.

**Second**, the law requires that the Postal Service tender mail to bush carriers based on the outbound passengers and freight the carriers transport in individual city pairs, relying on T-100 On-Flight O&D statistics. The Department's Bureau of Traffic Statistics (BTS) states that the T-100 will give different results depending on how carriers depict their flight schedules. For example, for the same multi-stop route, if one carrier chose to assign two

flight numbers and another only one, the results of the T-100 on-flight report would be inconsistent and carriers could manipulate the new system to receive more mail than appropriate.<sup>1</sup> We ask the carriers for comments about how to address this problem. As an interim solution, we will tentatively require that beginning 60 days after the issuance of this notice carriers wishing to participate in the tender of mail assign flight numbers such that single-plane operations between hubs be assigned only one flight number in the T-100. That does not resolve what to do for the data from July 1, 2002, until the tentative solution above is implemented. The law says that for the first tender of mail under the new system, the Postal Service will rely on an annual pool of data, and we anticipate the YE 6/30/03 will be that period. It must thus be decided whether mail tender in the initial period will be determined on less than a full year of data, on the basis of potentially inconsistent annual data, thereby delaying the implementation of the new tender system, or by requiring the carriers to resubmit prior data in a consistent format as discussed above. We request that the parties comment on this issue.

**Third**, section (k)(5) of the law provides that:

“(5) Not later than 30 days after the last day of each calendar month, carriers qualified or attempting to be qualified to be tendered nonpriority bypass mail shall report to the Secretary the excise taxes paid by city pair to the Department of the Treasury and the weight of and revenue earned by the carriage of nonmail freight. Final compiled data shall be made available to carriers providing service in the hub.”

We have discussed this issue with BTS and the Postal Service. Some carriers have informally stated that quantifying excise taxes by market would prove difficult, if not impossible. It is not clear from the legislative history what the purpose is of carriers reporting excise taxes by route. We thus request comments on the best method to meet the requirements of the law.

**Fourth**, in paragraph (s), the law provides that:

“(d) Actions of Air Carriers To Qualify--Beginning 6 months after the date of enactment of this Act, if the Secretary determines, based on the Secretary's findings and recommendations of the Postal Service, that an air carrier being tendered nonpriority bush bypass mail is not taking actions to attempt to qualify as a bush passenger or nonmail freight carrier under section 5402 of title 39, United States Code (as amended by this title), the Postal Service shall immediately cease tender of all nonpriority bypass mail to such carrier.”

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<sup>1</sup> Differences in how flight numbers are assigned would distort how traffic is reported. For example, assume a carrier operating Hub to A to B assigns one flight number from Hub to A and a different flight number from A to B. If 10 passengers boarded the plane at the Hub and 3 were bound for point A and 7 were bound for B, the carrier would report 10 Hub to A passengers and 7 A to B passengers. In contrast, if the carrier assigns a single flight number for the itinerary, the carrier would correctly report 3 Hub to A passengers and 7 Hub to B passengers. This reporting inconsistency could affect the carriers' relative standing for mail tender.

Carriers making no effort to carry traffic other than mail are to be excluded from mail tender, but the law does not state how the Department is to determine whether the carrier is making an effort to become a passenger or freight carrier. This provision also raises the question as to whether carriers must carry passengers or freight in all markets to receive mail. Conversely, if a carrier carries only one passenger in one market, should it be eligible to carry mail in all markets it serves? An option would be to require the mail-only carriers to demonstrate to the Department the steps that they have taken to begin carrying passengers or freight. We request comments on this issue.

**Fifth**, the law provides for preferential tender to carriers providing service under an FAA certificate issued under 14 CFR Part 121, large aircraft operations. Carriers cannot operate under Part 121 unless the FAA approves such operations under the carrier's own operation specifications. The USPS has taken the position that if an airport is certificated for Part 121 aircraft and if a Part 121 carrier is serving the market, it would pay the (lower) Part 121 rate, even if the service were actually provided with small Part 135 aircraft. We tentatively propose to require all carriers to report on a monthly basis, in Attachment A, any airports listed on their operation specifications certificated for Part 121 service. In addition, to report all aircraft in their fleet that are Part 121 certified should they wish to qualify for such preference.

**Sixth**,

In paragraph 18, the law defines as a "121 bush passenger carrier a bush passenger carrier providing passenger service on bush routes under part 121." Elsewhere, under Section 5(h)(2)(B), the law provides that *19-seat* Part 121 aircraft are to receive preferred tender compared to part 135 aircraft. Finally, the law provides that the Department shall establish three bush mail rates: for Part 121, Part 135, and amphibious aircraft.

"6(B) The Secretary shall establish a bush rate based on data collected under subsection (k) from 121 bush passenger carriers. Such rates shall be paid to all bush passenger carriers operating on city pair routes in the State of Alaska where a 121 bush passenger carrier is tendered nonpriority bypass mail."

Some aircraft types operating under Part 121 are not 19-seat aircraft, and might not receive the favored treatment explicitly contemplated under Section 5(h)(2)(b). We ask for comment on whether the Department should only include the costs of 19-seat Part 121 aircraft in determining the Part-121 rate? If so, what is to be done with the costs of Part 121 aircraft certificated for fewer than 19 seats? Should they be assigned to the Part 121 cost pool, the Part 135 cost pool, disregarded, or should they be used to establish yet a fourth bush rate, *i.e.*, a Part 121 rate for aircraft with fewer than 19 seats?

### **Seventh**

A number of new ratemaking issues will arise under the base rate investigation we are to conduct. There will be a narrow window between when the final data is submitted and when the Department issues an order. Because this will be an investigation rather than a simple update, we encourage the parties to submit preliminary comments about any potential ratemaking issues before the show-cause order issues. To assist the parties in their comments and to expedite matters, we will provide a quarterly profile of the bush industry when the data becomes available.<sup>2</sup>

### **Eighth**

Paragraph k(2) requires that

“(k)(2) In order to ensure sufficient, reliable, and timely traffic data to meet the requirements of this subsection, the Secretary shall require--“(A) the monthly submission of the bush carrier's data on T-100 diskettes, or any other suitable form of data collection, as determined by the Secretary; and“(B) the carriers to retain all books, records, and other source and summary documentation to support their reports and to preserve and maintain such documentation in a manner that readily permits the audit and examination by representatives of the Postal Service or the Secretary.”

“(3) Documentation under paragraph (2) shall be retained for 7 years or until the Secretary indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of shall be retained.”

In addition, under this provision, it would appear necessary that all flight logs would have to indicate the aircraft type, the pilot, the entire routing, the day of the flight. In addition, in order to document the reported traffic, it would appear that carriers would have to retain copies of invoices of passenger tickets and freight bills. We also request comment regarding other documents that carriers normally produce and can readily retain, as well as less burdensome means for carriers to document their schedule integrity and traffic reported.

We encourage comments on these tentative positions as well as any other issues that the carriers, USPS, or any other party would like to comment on. After examining the comments, the Department will determine what, if any, further steps should be undertaken. We therefore request all parties to Docket 1995-405 to supply comments and supporting information, as requested, within 30 days of the service date of this notice, and replies to the comments to be filed no later than 15 days after the initial comment filing date.

Comments should be sent to: U.S. Department of Transportation, PL 401, Docket Operations, 400 7<sup>th</sup> Street, SW, Washington, D.C. 20590, Dockets 2003-14694 and 14695.

3

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<sup>2</sup> The problem outlined in paragraph (2), above, with flight numbers affects the T-100 Market O&D report, but would not affect the segment reports which would appear to be the only traffic reports critical for calculating the various mail rates.

<sup>3</sup> The original submissions is to be unbound and without tabs on 8 1/2' x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. In the alternative, filers

We shall serve this notice on all persons on the service list in this docket.

By:

**READ C. VAN DE WATER**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web*  
<http://dms.dot.gov>

Monthly Excise Taxes, Fleet Inventory, Insurance, and Airport Specifications

Safety Information							
	<u>Name</u>		<u>d/b/a</u>		<u>Two Letter Code</u>		<u>Three Letter Code</u>
Carrier Identifier	XX		XX		XX		XX
FAA POI	XX						
Insurance Company(s)	XX						
Insurance Company(s)	XX						

Excise Tax Information							
Non-Mail							
	<u>Skd. Psgr.</u>		<u>Skd. Freight</u>		<u>Mail</u>		<u>Other</u>
Excise Taxes	XX		XX		XX		XX

Fleet and Insurance Information 1/							
<u>Aircraft Tail Number</u>	<u>Aircraft Type 2/</u>		<u>Aircraft Code 2/</u>		<u>Type of Operation 3/</u>		<u>Payload Capacity 4/</u>
XX	XX		XX		XX		XX
XX	XX		XX		XX		XX
XX	XX		XX		XX		XX
XX	XX		XX		XX		XX
XX	XX		XX		XX		XX
XX	XX		XX		XX		XX

List of Airports That Carrier's Operations Specifications Authorized Service to Under Part 121  
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1/ Aircraft was operable and insured at any time during the month, although aircraft was not necessarily operated.

2/ Using BTS reporting system for aircraft type and code number.

3/ Either Part 121, Part 135, or Amphibious.

4/ In pounds

5/ Passenger seats only, exclude pilot and co-pilot.